

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
Asheville Division**

THE OKONITE COMPANY, INC., individually
and as assignee of RICKER TRUCKING
COMPANY, LLC,

Plaintiff,

vs.

GROVER CLAUDE GWYN, individually and
doing business as GROVER GWYN TRUCKING,
and GROVER GWYN TRUCKING,

Defendants.

Civil Action No.: 1:14-cv-80

**DECLARATION OF
JONES P. BYRD**

I, Jones P. Byrd, declare as follows:

1. I am an attorney licensed to practice in the State of North Carolina. I am a partner with the law firm of Van Winkle, Buck, Wall, Starnes and Davis, P.A. ("Van Winkle"), and I am co-counsel for Plaintiff in this action. I offer this declaration in support of Plaintiff's motion for an award of attorneys' fees and costs in this action, pursuant to the Court's Order of March 3, 2015. I have personal knowledge of the facts set forth in this declaration, and if called as a witness I could and would testify competently thereto.

2. I have reviewed the invoices for services rendered by Van Winkle to Plaintiff in this action. As set forth in more detail below, I have confirmed that the reasonable attorneys' fees and costs incurred in this lawsuit by my Firm are \$16,223.38, for the period of 2014 through the present.

3. I have practiced law for over 40 years in North Carolina and currently focus on civil litigation and dispute resolution. I received a B.A. in Political Science and a J.D. from

Wake Forest University. I am admitted to practice before the courts of North Carolina, as well as the United States Supreme Court, the United States Court of Appeals for the Fourth Circuit, and the United States District Courts for the Western, Middle, and Eastern Districts of North Carolina. A true and correct copy of my biography with additional details regarding my background is attached as Exhibit A. My hourly rate for 2014 and 2015 is \$385.00. I believe my rate to be reasonable and commensurate with hourly rates charged by comparable law firms for similar services.

4. As lead local counsel for this matter, I supervised and reviewed the work of my associate and paralegal who worked on this case, who all performed much of the underlying work in a more cost-effective and efficient manner. I also advised regarding the drafting and revision of all pleadings and motions in this matter, including the Motion for Default Judgment.

5. Melanie Miller, a paralegal with Van Winkle, maintained the files in this case, served as the primary contact with the investigators, assisted with the FOIA request and appeal, and prepared and formatted the pleadings in preparation for electronic filing. Ms. Miller's billing rate is \$120.00 per hour. The firm's use of a paralegal in the handling of many paraprofessional tasks decreased the number of attorneys' hours billed, leading to a lower total amount of attorneys' fees. I believe her rate to be reasonable and commensurate with hourly rates charged by comparable law firms for similar services.

6. Elizabeth Franks is a former third-year associate with Van Winkle. A true and correct copy of her biography is attached as Exhibit B. Ms. Franks researched various legal and procedural issues, revised the Complaint to comply with local practice and custom and North Carolina Law, prepared FOIA requests, and communicated with co-counsel, the Federal Motor Carrier Safety Administration, the North Carolina Department of Transportation, and

Defendants' designated agent. Ms. Franks is admitted to practice before the United States District Courts for the Western and Middle Districts of North Carolina. Her hourly rate for 2014 and 2015 was \$175.00 per hour. I believe her rate to be reasonable and commensurate with hourly rates charged by comparable law firms for similar services.

7. In order to locate Defendant Grover Gwyn, the principal of Grover Gwyn Trucking, who is in the trucking business and travels frequently, we engaged the services of three private investigators. The first investigator was unable to locate the Defendants and did not charge for his services. We subsequently hired Brian Lee Knopp, who has been a North Carolina licensed private investigator since 1996 and was a Litigation Investigator at Van Winkle from 1988 to 1996. We also hired Tony Petty of Quality Investigations, who has over 15,000 hours of investigative experience. Mr. Knopp and Mr. Petty each charged \$125 for his services.

8. The total fees billed by my firm to Plaintiff are \$15,309.50. When broken down, the requested fee award represents 2.7 hours of my time (\$1,039.50), 19.75 hours of Ms. Miller's time (\$2,370.00), and 68 hours of Ms. Franks' time (\$11,900.00). Supporting invoices, which have been redacted to preserve attorney-client privilege and work product, are attached as Exhibit C.

9. The invoices in Exhibit C also include the total amount of costs associated with the investigation and prosecution of this action. Those costs are \$913.88, and include: \$400 in court filing fees; \$250 to private investigators to serve Defendants; \$146.73 for mailing fees and postage, \$58.40 for copies, and \$58.75 for legal research and online Pacer costs.

10. Van Winkle has not yet billed Plaintiff \$6,418.00 for services rendered in April 2015. These services include reviewing the Court's default judgment, communicating with the

client regarding the judgment and enforcement thereof, and preparing the Plaintiff's motion for attorneys' fees. A true and correct copy of a summary of those services is attached as Exhibit D.

11. A true and correct copy of the United States Attorney's Office's "Laffey Matrix," obtained from the United States Attorney's Office's website at http://www.justice.gov/sites/default/files/usao-dc/legacy/2014/07/14/Laffey%20Matrix_2014-2015.pdf, is attached hereto as Exhibit E.

12. A true and correct copy of the North Carolina Bar Association 2012 Economic Survey, obtained from the North Carolina Bar Association's website at <https://www.ncbar.org/media/88938/2012-Economic-Survey-Final-Report.pdf>, is attached hereto as Exhibit F.

13. In sum, Plaintiff respectfully requests reasonable attorneys' fees in the amount of \$15,309.50 and costs in the amount of \$913.88, for a total recovery of \$16,223.38, for the period of 2014 through the present.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

This the 10th day of April, 2015.

Respectfully submitted,

s/ Jones P. Byrd
Jones P. Byrd, NCSB #656
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